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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/735,260

12/11/2003

Colin Whitby-Stevens

APPLE.049A

9784

65201 7590 12/18/2007  
GAZDZINSKI & ASSOCIATES, P.C.  
11440 WEST BERNARDO COURT  
SUITE 375  
SAN DIEGO, CA 92127

EXAMINER

ABRAHAM, ESAW T

ART UNIT

PAPER NUMBER

2112

MAIL DATE

DELIVERY MODE

12/18/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/735,260

Applicant(s)

WHITBY-STREVENS ET AL.

Examiner

Esaw T. Abraham

Art Unit

2112

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 27 September 2007.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 31-49 and 57-81 is/are pending in the application.
- 4a) Of the above claim(s) 1-30 and 50-56 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 31-49 and 57-81 are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**  
**RESPONSE TO APPLICANT'S REMARKS**

Applicant's election without traverse of Group II (claims 31-49) and new added claims (claims 57-81), which are related to the non-elected Group I (claims 1-12 and 50-56, see the second office action) are acknowledged. However, upon further consideration, a new Restriction/requirement is made against to the new added claims (claims 57-81) since the claims are distinct from Group II and classified under 714/801. NOTE: The Examiner would like to point out that, the applicant must elect one of the groups and should not add new claims which are classified within the already canceled claims as "non-elected" in the previous office actions.

**Election / Restriction**

Restriction to one of the following invention is required under 35 U.S.C. 121

Group I. Claims 57-81 drawn to:

A method of reliably transmitting data across a communication medium comprising: encoding a symbol comprising a plurality of bits, wherein a most significant bit and a least significant bit of said symbol are adapted to indicate a symbol type; and transmitting the symbol across the communication medium; wherein said encoding increases the reliability of said transmitting data (as in claim 57) or A computerized apparatus for transmitting data across a communication medium, said apparatus comprising: a first module adapted to encode a symbol comprising a

plurality of bits, wherein the first module is adapted to indicate a symbol type by setting or resetting both a most significant bit and a least significant bit of said symbol; and a second module adapted to transmit the encoded symbol across the communication medium (as in claim 68) classified in 714/747.

Group II. Claims 31-49 drawn to:

A method of transmitting data across a communication medium to a receiving said comprising receiving at said receiving side a symbol comprising a plurality of bits; reading the most significant bit and the least significant bit of said symbol; and determining a symbol type based at least on said reading (as in claim 31) and an apparatus for transmitting data transmitted across a communication medium, comprising a first module adapted to receive a symbol comprising a plurality of bits a second module in data communication with said first module and adapted to read the most significant bit and the least significant bit of said symbol; and a third module adapted to determine a symbol type based on the reading of the second module (as in claim 41) classified in 714/801.

The invention are distinct, each from the other because of the following reasons:

Invention Group I and Group II are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct if

they don't overlap in scope and are not obvious variants, and if it is shown that at least one subcombination is separately usable,

In the instance case, invention Group I has separate utility separate utility such as encoding a symbol comprising a plurality of bits, wherein a most significant bit and a least significant bit of said symbol are adapted to indicate a symbol type; and transmitting the symbol across the communication medium; wherein said encoding increases the reliability of said transmitting data or A computerized apparatus for transmitting data across a communication medium, said apparatus comprising: a first module adapted to encode a symbol comprising a plurality of bits, wherein the first module is adapted to indicate a symbol type by setting or resetting both a most significant bit and a least significant bit of said symbol; and a second module adapted to transmit the encoded symbol across the communication medium (as in claim 68). See MPEP 806.05(d).

In the instant case, the invention of Group II has separate utility such as transmitting, receiving and reading a symbol wherein the symbol comprises most significant bit and least significant bit and determining a symbol type based the reading (as in claim 31) and an apparatus comprising a first module for receiving a symbol, a second module for reading the most significant bit and the least significant bit of the symbol and a third module for determining a symbol type based on the reading of the second module (as in claim 41) which the claims are basically reading bits, comparing the bits and determining a symbol type based

on the reading (checking character or symbols) classified in 714/801. See MPEP 806.05(d).

The examiner has required restriction between subcombinations usable together. Where applicant elects a subcombination and claims thereto are subsequently found allowable, any claims(s) depending from or otherwise requiring all the limitations of the allowable subcombination will be examined for patentability in accordance with 37 CFR 1.104. See MPEP 821.04(a). Applicant is advised that if any claim present in a continuation or divisional application is anticipated by, or includes the limitations of, a claim that is allowable in the present application, such claim may be subject to provisional statutory and/or non-statutory double patenting rejections over the claims of the instant application.

Because these inventions are distinct for the reason given above and the search required for Group I is not required for Group II, restriction for examination purposes as indicated is proper.

Because these inventions are distinct for the reason given above and the reasons given above and search required for Group II is not for Group I, restriction for examination purposes as indicated is proper.

Because these inventions are distinct for the reason given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

Because these inventions are independent or distinct for the reasons given above there would be a serious burden on the examiner if restriction is not required because the invention require a different field of search (see MPEP 808.02), restriction of examination purposes as indicated is proper.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement is traversed (37 CFR 1.143).

Applicant is reminded that upon cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the specification. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

### **Conclusion**

2. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Esaw T. Abraham whose telephone number is (571) 272-3812. The examiner can normally be reached on M-F 8am-4PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jacques Louis-Jacques can be reached on (571) 272-6962. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
Esaw Abraham

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